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| EXAMINER | |
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**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

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**BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES**

Application Number: 10/525,063
Filing Date: February 18, 2005
Appellant(s): KAYE, ALLAN

Stanley Spooner
For Appellant

**EXAMINER'S ANSWER**

This is in response to the appeal brief filed July 7, 2008 appealing from the Office action mailed December 21, 2007.

**(1) Real Party in Interest**

A statement identifying by name the real party in interest is contained in the brief.

**(2) Related Appeals and Interferences**

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

**(3) Status of Claims**

The statement of the status of claims contained in the brief is correct.

**(4) Status of Amendments After Final**

No amendment after final has been filed.

**(5) Summary of Claimed Subject Matter**

The summary of claimed subject matter contained in the brief is correct.

**(6) Grounds of Rejection to be Reviewed on Appeal**

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

**(7) Claims Appendix**

The copy of the appealed claims contained in the Appendix to the brief is correct.

**(8) Evidence Relied Upon**

| | | |
|---|---|---|
| 4,410,294 | Gilb et al. | 10-1983 |
| 4,210,694 | Fogg, III | 07-1980 |
| 4,784,920 | Machida | 11-1988 |

**(9) Grounds of Rejection**

The examiner acknowledges, as the appellant points out on pages 9-12, that the motivational statements were cited from references not used in the immediate rejections. The correction has been made here, while maintaining the standard for the rejection.

The following ground(s) of rejection are applicable to the appealed claims:

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

Claims 1, 3-5, and 10 are rejected under 35 U.S.C. 103(a) as being unpatentable over Gilb et al. (US Patent 4,410,294) in view of Fogg, III (US Patent 4,210,694). Gilb et al. discloses a method of forming a bracket by cutting out a blank from a sheet of metal (Column 4, lines 28-30); the blank having a central portion including at least one fold line (12, 21, 45 or 46) defining first and second regions of the blank, the fold line extending only partially across the blank and creating non-folding portions of the blank at each end of the fold line (see attached Figure 6 for designation of regions and non-folding portions). Then, using a forming tool (progressive die forming equipment and/or hammer) undertaking a bending operation to bend the central portion of said blank about the fold line only to create a predetermined angle between the first and second regions to form the required three-dimensional shape and then a further bending operation to bent the blank about a further fold line (Column 4, lines 30-39). Also, to create different values of a predetermined angle allowing different three-dimensional shaped brackets

to be formed (Column 5, lines 34-37). The fold line defines planar first and second regions of the bracket and after the bending operation the first region of the bracket extends either side of the plane of the second region of the bracket (Figure 1).

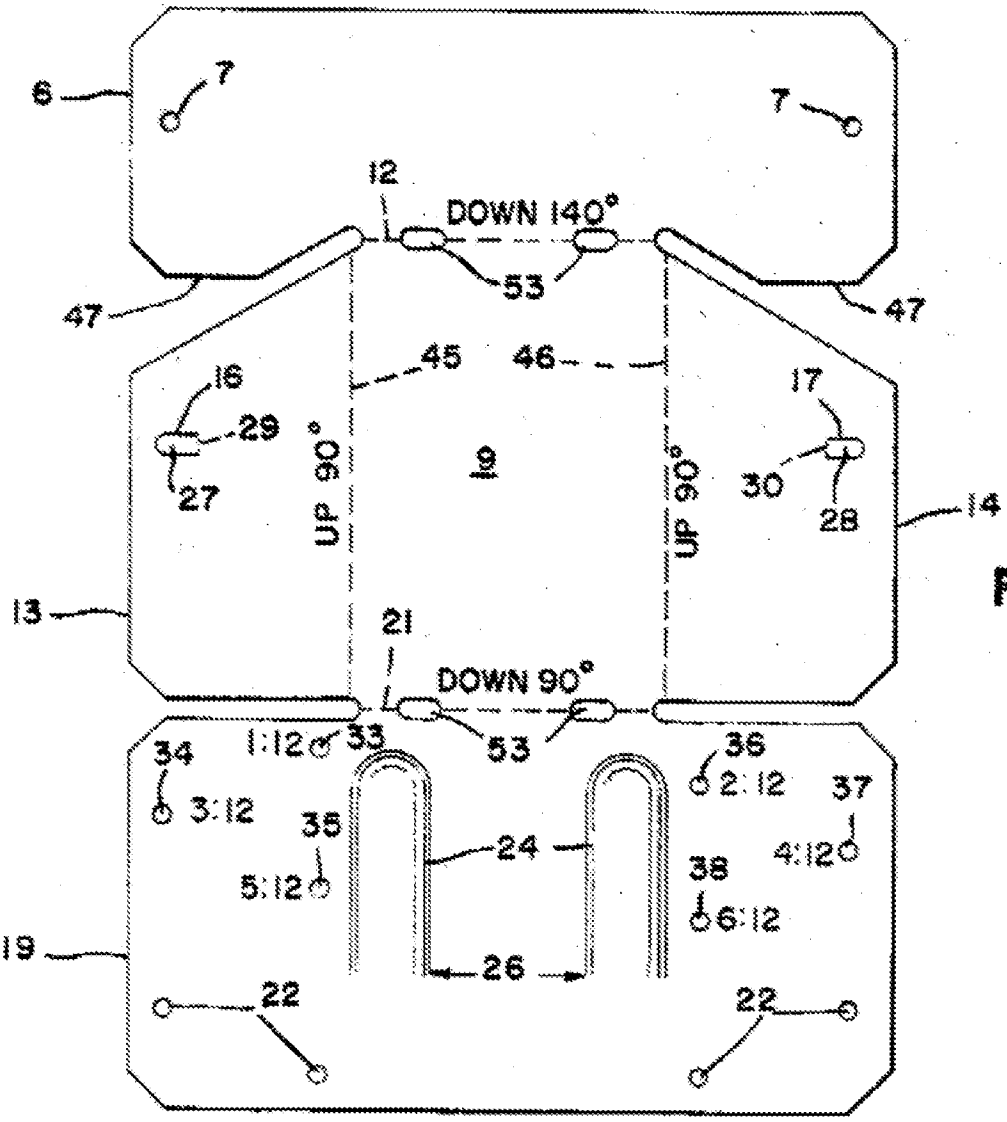


FIG. 6

Gilb et al. discloses the invention substantially as claimed except for the composite material and bending operation completed before the curing. Fogg, III teaches a method of making a laminated composite structural fitting wherein the bending is completed before the

curing operation (Column 4, lines 42-57). Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to change the blank's material composition and the curing ability of this composition in order to create a structural fitting (bracket) that "has adequate strength to transfer the necessary loads with a minimum of weight…(with) low cost means of fabricating" (Column 1, lines 55+ - Column 2, lines 1-22 as cited in Fogg).

Claims 1-2, 4-5 and 10 are rejected under 35 U.S.C. 103(a) as being unpatentable over Gilb et al. in view of Machida (US Patent 4,784,920). Gilb et al. discloses the invention substantially as claimed except for the composite material the curing and bending operation are concurrent. Machida discloses a method of making a fiber-reinforced plastic composite plate wherein the curing and bending operation are concurrent (Column 4, lines 35-38). Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to change the blank's material composition and the curing ability of this composition in order to provide an element with "high accuracy…good workability… (and) integrally hardened" (Column 2, lines 10-55 as cited in Machida).

**(10) Response to Argument**

The appellant states the "the admitted lack of a composite material disclosure mandates that Gilb cannot teach the 'cutting' step, the 'bending operation' step or the 'curing' step and thus is actually an admission that Gilb fails to teach all three steps" (page 6, last three lines). The examiner points out that a 35 U.S.C. 103 (a) rejection, with the Gilb and Fogg references, was made to meet the claim limitations of the composite material and deforming steps. The base

reference, Gilb, discloses a sheet metal that is cut, bent, and cured accordingly (Column 4, lines 28-39 and Figure 6), while the secondary reference, Fogg, teaches forming a three dimensional product with cutting, bending, and curing a composite material (Abstract and Column 3, lines 44+ - Column 4, 1-43).

The appellant states that "the Examiner makes no allegation that Fogg or Machida teach the missing claimed interrelationships, i.e., that the claimed blank (a) has 'a central portion including at least one fold line defining first and second regions of the blank' or (b) a 'fold line extending only partially across the blank' or (c) 'creating non-folding portions of said blank at each end of the fold line'" (page 8, lines 3-7). The examiner interprets the Gilb reference to disclose these claimed features. Gilb shows a blank (9) having a central portion including at least one fold line (12, 21, 45, or 46) defining first and second regions of the blank; a fold line extending only partially across the blank and creating non-folding portions of said blank at each end of the fold line (Figure 6).

With regards to the correction made in the 'Grounds of Rejection," based on appellant's remarks on pages 9-12, it provides no substantive changes or additions for the art cited. In response to applicant's argument, that the examiner's has "failed to meet the burden of establishing a *prima facie* case of obviousness by failing to provide any explicit analysis" (page 12, lines 4-6) , the examiner recognizes that the TSM test (teaching-suggestion- motivation) is sufficient to address the rationale of obviousness.

In response to applicant's arguments on pages 12-14, regarding that the Fogg and Machida references teach away from the features of the applicant's claim, it must be recognized

that one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references.

In response to applicant's argument on pages 14-18, that there is no suggestion to combine the references, the examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. In this case, all the references are high-strength construction connection brackets and the teaching references contain motivations to produce the claimed invention.

**(11) Related Proceeding(s) Appendix**

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

/TERESA BONK/

Examiner, Art Unit 3725

Conferees:

/Marc Jimenez/

TQAS TC 3700

/Derris H Banks/

Supervisory Patent Examiner, Art Unit 3725